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10 Attorneys for Defendants
11 DIAMOND PARKING, INC. AND
12 DIAMOND PARKING SERVICES, LLC

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 ROBERT TERUEL, individually; and
16 on behalf of all those similarly
17 situated,

18 Plaintiffs,

19 vs.

20 DIAMOND PARKING, INC., a
21 Washington Corporation;
22 DIAMOND PARKING SERVICES,
23 LLC, a Washington Limited Liability
24 Company; and DOES 1 through 500,
25 inclusive,

26 Defendants.

) Case No.

) **DEFENDANTS' NOTICE OF**
) **REMOVAL OF CLASS ACTION**
) **COMPLAINT; DECLARATION OF**
) **JAN SUMNER IN SUPPORT**
) **THEREOF**

) Action Filed: May 21, 2007

1 TO THE HONORABLE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA:

3 Pursuant to 28 U.S.C. Sections 1332, 1441, 1446, and 1453, Defendants
4 Diamond Parking, Inc., a Washington Corporation, and Diamond Parking Services,
5 LLC, a Washington Limited Liability Company (together, "Defendants") file this
6 Notice of Removal of this action from the Superior Court of the State of California
7 for the County of Alameda, in which it is now pending, to the United States District
8 Court for the Northern District of California, Oakland Division. As the basis for
9 removal, Defendants represent that:

10 1. Plaintiff Robert Teruel ("Plaintiff") commenced this class action on
11 May 21, 2007 against Defendants in Alameda Superior Court, bearing case number
12 RG07326831 and captioned Plaintiffs' Wage/Hour Class Action Complaint For:
13 (1) Failure to Timely Pay All Wages; (2) Failure to Pay Overtime Wages;
14 (3) Failure to Pay Minimum Wages; (4) Failure to Provide Rest and Meal Periods;
15 (5) Failure to Reimburse Expenses; (6) Statutory Wage Violations (Late Payment of
16 Wages); (7) Breach of Contract; (8) Unfair Wage/Hour Business Practices Pursuant
17 to Business & Professions Code Section 17200, *et seq.*; (8) Conversion of Wages;
18 and (9) Violation of Civil Code Section 52.1.

19 2. A copy of the Summons and Complaint are attached collectively hereto
20 as Exhibit "A" and incorporated by reference. There have been no further
21 proceedings filed in the Alameda Superior Court as of the date of this removal.

22 3. The Alameda Superior Court (where this action was originally filed) is
23 located within the jurisdiction of the United States District Court for the Northern
24 District of California.

25 4. This is a civil action over which this Court has original jurisdiction
26 under 28 U.S.C. § 1332(a), and is one which may be removed to this Court under 28
27 U.S.C. § 1441(a), in that it is a civil action between citizens of different states and
28 the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest

1 and costs. Because the state court action is pending in the Alameda Superior Court,
2 removal of the state court action to this District Court is proper under 28 U.S.C.
3 sections 1391(a) and 1446(a).

4 5. This removal is timely pursuant to 28 U.S.C. §§ 1446 and 1453
5 because not more than 30 days have passed since Defendants received service of
6 Plaintiffs' Summons and Complaint. Service on Defendants was made by personal
7 service on InCorp Services, Inc. on June 4, 2007.

8 6. In his Complaint, Plaintiff asserts, on his own behalf and on behalf of a
9 putative class, a myriad of claims arising out of his employment with Defendants
10 during the four years preceding the filing of his Complaint. Among other claims,
11 Plaintiff alleges that he and the putative class were misclassified as exempt from
12 overtime under California law, that he and the putative class were not paid overtime
13 and other wages as provided by law, and he and the putative class were denied meal
14 and rest periods and required to work "off the clock" without being paid. Plaintiff
15 further alleges that Defendants failed to pay overtime and other wages as required
16 by law and did not reimburse his business-related expenses.

17 7. Plaintiff alleges in his Complaint that, at the time of the incidents
18 alleged in this case, he and the putative class were "present and/or former residents
19 and/or workers within the State of California" and were "current and/or former
20 employees of Defendants." *See* Complaint ¶ 8. On information and belief, Plaintiff
21 is also a citizen of the State of California and resides in the County of Orange.

22 8. Defendant Diamond Parking, Inc. is incorporated under the laws of the
23 State of Washington, with its principal place of business in Washington. Defendant
24 Diamond Parking Services LLC is organized under the laws of the state of
25 Washington with its principal place of business in Washington. All of the members
26 of Diamond Parking Services LLC are citizens of states other than California. As
27 such, there is complete diversity between Plaintiff, on the one hand, and
28 Defendants, on the other.

9. In his Complaint, Plaintiff seeks compensatory damages in an unknown amount for himself and on behalf of the putative class, as well as statutory penalties, civil penalties, restitution, and punitive damages. *See* Complaint ¶¶ 18-21, 34-35, 39-40, 47-48, 52-53, 57-58, 62, 68, 71-72, and 80, as well as the prayer for relief. Plaintiff also seeks reimbursement of costs and attorneys' fees.

10. Removal of this action is proper under 28 U.S.C. § 1332(a) and 28 U.S.C. § 1441, in that the matter in controversy for the named plaintiff exceeds the sum or value of \$75,000, excluding interest and costs. *See Exxon Mobile Corp v. Allapatah Services, Inc.*, 545 U.S. 546, 558-559 (2005). Although Plaintiff chose not to specify the amounts of damages sought by his class action Complaint, it is facially apparent from the face of the Complaint that the damages sought for the one named plaintiff exceeds \$75,000. Where the complaint is silent on the amount of damages sought, the District Court "may consider whether it is 'facially apparent' from the Complaint that the jurisdictional amount is in controversy." *Singer v. State Farm Mutual Automobile Insurance Co.*, 116 F.3d 373, 377 (9th Cir. 1997). "In measuring the amount in controversy for purposes of diversity jurisdiction, a court must assume that the allegations of the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint..." *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp.2d 993, 1001 (C.D. Cal. 2002) (citations omitted).

11. Moreover, where a plaintiff alleges tort claims and seeks both compensatory and punitive damages – which Plaintiff has done in this action – courts have found it to be facially apparent that the matter in controversy exceeds \$75,000. *See White v. FCI USC, Inc.*, 319 F.3d 672, 674 (5th Cir. 2003) (jurisdictional amount satisfied based on general damage allegations in complaint and plaintiff's admission that "it [was] possible that [damages] will exceed \$75,000.00 at the time of trial"); *Lockett v. Delta Air Lines, Inc.* 171 F.3d 295, 298 (5th Cir. 1999)(jurisdictional amount satisfied based on general damage claims).

12. Here, Plaintiff asserts claims, *inter alia*, that he was misclassified as exempt and not properly paid for missed meal and break periods, as well as wages and overtime premiums. Plaintiff seeks to recover all alleged unpaid wages, statutory and civil penalties, waiting-time penalties, and attorneys' fees. Taking the allegations of the Complaint as true, and applying the annual salary paid to Plaintiff (\$45,000 or approximately \$22 per hour) during his employment with Defendants (September 2005 to May 2006), plus attorneys' fees and other available penalties, Defendants allege that Plaintiff exceeds the jurisdictional minimum amount of \$75,000. Specifically, Plaintiff allegedly seeks to recover additional wages of no less than approximately \$8,000 (missed meal and break periods), \$5,600 (waiting-time penalties), \$5,250 (overtime premiums), \$3,200 (civil penalties) *plus attorneys' fees*. On information and belief, Defendants allege that Plaintiff's attorneys' fees in this class action will exceed \$100,000. (*See* Declaration of Jan Sumner, ¶¶ 1 and 2.)

13. As there is complete diversity of citizenship and the amount in controversy exceeds \$75,000 for the one named plaintiff exclusive of interest and costs, this Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a). Thus, for this reason too, this action is removable under 28 U.S.C. § 1441.

14. Defendants certify that written notice of the filing of this Notice of Removal will be promptly given to Plaintiff and to the Clerk of Court of the Alameda Superior Court.

1 WHEREFORE, Defendants pray that the above-described civil action be
2 removed from the Superior Court of the State of California for the County of
3 Alameda to the United States District Court for the Northern District of California.
4

5 DATED: July 10, 2007

DAVIS WRIGHT TREMAINE LLP
John P. LeCrone
Camilo Echavarria

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7
8 By: _____
9 John P. LeCrone

10 Attorneys for Defendants
11 DIAMOND PARKING, INC. and
12 DIAMOND PARKING SERVICES, LLC
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CERTIFICATE OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On July 10, 2007, I served the foregoing document(s) described as:
DEFENDANTS' NOTICE OF REMOVAL OF CLASS ACTION COMPLAINT
 by placing a **true copy** of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

A. Nicholas Georggin, Esq.
 Carmine J. Pearl, II, Esq.
 Bailey Pinney Georggin & Krutcik LLP
 26021 Acero
 Mission Viejo, CA 92691

I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

Executed on July 10, 2007, at Los Angeles, California.

- ☐ State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.
- ☒ Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Avis Jackson

 Print Name

 Signature